Admitting that there may be a partial revocation of a duly executed will by a testator—although such a right is denied in many jurisdictions—the question very naturally arises as to the effect of such revocation upon the remainder of the will. Various Statutes of Wills have been enacted both in this country and in England declaring that the making of valid wills or valid testamentary dispositions must be attended with certain formalities. If by simply drawing a line through a duly executed devise, the testator may so affect his will as to the part remaining that the testamentary disposition thereof will be different, he is in effect making a new and different disposition without observing the formalities prescribed by the statute. Again, if the testator himself can do this by the simple drawing of a line, it is difficult to see why a stranger to the instrument might not also effect a new testamentary disposition in the same way if he had an opportunity to secure the will. If these premises be true, such a situation opens wide the door for fraud and accomplishes indirectly the very thing which the Statute of Frauds was designed to prevent. This is the line of reasoning upon which such cases as *Pringle* v. *McPherson*, 2 Brevard (S. C.) 279, 3 Am. Dec. 713; *Eschback* v. *Collins*, 61 Md. 478, 48 Am. Rep. 123; and *Mile's Appeal*, 68 Conn. 237, 36 Atl. 39, 36 L. R. A. 176, are based, holding that the cancellation of a part cannot be given the effect of a new devise. But there is a line of cases, of which the principal case is the latest expression, which allow the part cancelled to fall into and pass under the residuary clause, if there be a residuary clause in the will. The leading case on this position is *Bigelow* v. *Gillott*, 123 Mass. 102, 25 Am. Rep. 32, where, in answering the contention that this was practically allowing a new devise without the proper formalities, the court said: "It is true the act of revocation need not be done in the presence of witnesses; but such act does not dispose of the property. The property is disposed of by the residuary clause, which is executed with all the formalities required in the execution of a proper testamentary disposition." The doctrine of the principal case is also recognized in *Brown* v. *Brown*, 91 S. C. 101, 74 S. E. 135, where the court, after holding that there could be no testamentary disposition without observance of the statutory formalities, said: "The increase of the residuary clause which may result from the cancellation is not a new testamentary disposition, but a mere incidental consequence resulting from the exercise of the power conferred on the testator by statute." See also *Collard* v. *Collard*, (N. J. 1907), 67 Atl. 190.

WILLS—PER STIRPES OR PER CAPITA DISTRIBUTION.—A testator made certain provision for his wife during her life; at her death the same provisions were to continue in force in favor of his niece during the extent of her life; at her death these provisions were to extend to his grandnephew with full force upon condition of his taking and bearing the sole name of the testator, John Winthrop. At the death of the second life-tenant the grandnephew refused to accede to the condition. The testator had anticipated such a contingency in his will, and had provided for its happening (after specifically providing for the conversion of his realty into personalty) as follows: "The proceeds are then to be thrown with the personal property, and the

whole is to be divided between my sisters, if alive, or their heirs, if dead, in equal proportions." *Held,* that the word "heirs" is used as a word of purchase and not of limitation, and that these heirs should take per stirpes and not per capita. *Branch* v. *De Wolf et al.* (R. I. 1915), 95 Atl. 857.

Although all courts constantly bear in mind the cardinal principal governing the construction of wills, viz., to ascertain the intention of the testator and to allow that intention to govern and control, yet they have not uniformly reached the same conclusion in cases similar to the principal case, as to whether the heirs or children or classes take per stirpes or per capita. In the absence of any direction to the contrary, the general rule is that the law which determines who shall take under a gift to heirs controls likewise the manner and proportions in which they shall take. ROOD, WILLS, 320; *McLean* v. *Williams,* 116 Ga. 257, 42 S. E. 485, 59 L. R. A. 125; *Kirkpatrick* v. *Kirkpatrick,* 197 Ill. 144, 64 N. E. 267; *Angus* v. *Noble,* 73 Conn. 56, 46 Atl. 278; *White* v. *Stanfield,* 146 Mass. 424, 15 N. E. 919. But whether the addition of such words as "equally," "share and share alike," "in equal proportions," "equally to be divided between," and the like, indicate a per capita rather than a per stirpes division, is a question upon which authorities conflict. On the one side are found *Bisson* v. *West Shore Ry. Co.,* 143 N. Y. 125, 38 N. E. 104; *Walker* v. *Webster,* 95 Va. 377, 28 S. E. 570, holding that the distribution should be per capita; on the other side are found *Guild* v. *Allen,* 28 R. I. 430, 67 Atl. 855; *In re Swinburne,* 16 R. I. 208, 14 Atl. 850; *Basseit* v. *Granger,* 100 Mass. 348; *Ross' Exr.* v. *Kiger,* 42 W. Va. 402, 26 S. E. 193. It has been held, however, in New York, where the per capita rule is in force, that it "will yield to a very faint glimpse of a different intention." *Woodward* v. *James,* 115 N. Y. 346, 22 N. E. 150. It seems clear, then, that the question as to a per stirpes or per capita distribution would be definitely determined by ascertaining the intention of the testator as gathered from an inspection of the entire instrument. In the principal case both classes of heirs were equally near to him in blood, and no reason can be discovered why each class should not share "in equal proportions." There at least is nothing to show a contrary intent.

WILLS—SIGNATURE OF HOLOGRAPHIC WILL UPON SEPARATE PAPER.—The deceased wrote on ordinary note paper a request that all her property be given to a certain charitable society. At the top she wrote, "This is my last and only will," but did not sign it. This was found enclosed in an unsealed envelope upon which were the words, "This is my last and only will," and the signature of the deceased. The lower court upheld the paper as the will. In reversing this, *held,* that such a document cannot be admitted to probate as a holographic will because of deceased's failure to sign it. *In Re Tyrrell's Estate,* (Ariz. 1915) 153 Pac. 767.

The right to make a testamentary disposition of property is a common law right. Statutory restraints have been placed upon such right and this right is now available only upon strict compliance with the terms of the statutes. *In Re Andrews,* 162 N. Y. 1, 56 N. E. 529; *In Re Walker's Will,* 110 Cal. 387, 42 Pac. 815; *Sears* v. *Sears,* 77 Oh. St. 104, 82 N. E. 1067. An